

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Raquel Velasquez	Team: Squad #11	CCRB Case #: 201408251	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 08/03/2014 3:55 AM	Location of Incident: Saint Marks Avenue and Albany Avenue; 77th Precinct stationhouse	Precinct: 77	18 Mo. SOL 2/3/2016	EO SOL 2/3/2016	
Date/Time CV Reported Sun, 08/03/2014 5:05 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/12/2014 4:17 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Marcel Francis	05240	948983	PBBN SU
2. SGT Thomas Hardell	05091	936730	PBBN SU
3. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Denisha Pierre	12632	930398	PBBN SU

Officer(s)	Allegation	Investigator Recommendation
A.POM Marcel Francis	Force: At Saint Marks Avenue and Albany Avenue in Brooklyn, PO Marcel Francis used physical force against § 87(2)(b)	
B.SGT Thomas Hardell	Force: At Saint Marks Avenue and Albany Avenue in Brooklyn, PO Thomas Hardell used physical force against § 87(2)(b)	
C.POM Marcel Francis	Discourtesy: At Saint Marks Avenue and Albany Avenue in Brooklyn, PO Marcel Francis spoke discourteously to § 87(2)(b)	
D.POM Marcel Francis	Force: At Saint Marks Avenue and Albany Avenue in Brooklyn, PO Marcel Francis pushed § 87(2)(b) against a car.	
E. Officers	Abuse: At the 77th Precinct stationhouse, officers strip-searched § 87(2)(b)	

Case Summary

On August 3, 2014, at approximately 3:55 a.m., § 87(2)(b) was stopped for possession of an open container of alcohol and subsequently arrested for criminal possession of a firearm by PO Denisha Pierre, PO Marcel Francis, and Sgt. Thomas Hardell, from Patrol Borough Brooklyn North Specialized Unit, at Saint Marks Avenue and Albany Avenue in Brooklyn. PO Francis and Sgt. Hardell then allegedly punched and kicked § 87(2)(b) (**Allegations A and B**). After being handcuffed, PO Francis spoke discourteously to § 87(2)(b) and pushed him against a car (**Allegations C and D**). § 87(2)(b) was transported to the 77th Precinct stationhouse and placed in a holding cell when he was allegedly instructed by an unidentified officer to remove his pants (**Allegation E**). Two parts of this incident were recorded via cellphone by § 87(2)(b) § 87(2)(b)'s sister (**Board Review 1 and 2 for videos; Board Review 14 for transcription of the videos**).

Mediation, Civil and Criminal Histories

This case was not suitable for mediation. § 87(2)(b) did not file a Notice of Claim regarding this incident (**Board Review 14**). § 87(2)(b) § 87(2)(c)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (**Board Review 12**).
- PO Francis has been a member of the NYPD for 4 years and there are no substantiated CCRB allegations against him. This is PO Francis' first CCRB complaint.
- Sgt. Hardell has been a member of the NYPD for 10 years and there are no substantiated CCRB allegations against him.

Finding and Recommendations

Allegations Not Pleaded

§ 87(2)(b) acknowledged having an open container of alcohol, so no stop is pleaded. Although § 87(2)(b) stated to the CCRB that he threw a cup of alcohol and denied having a firearm, he was observed throwing a firearm, which was vouchered (**Board Review 10**) and he pled guilty to possessing it, and his frisk and search were subsequent to being under arrest. Therefore, no frisk or search is being pleaded.

Explanation of Subject Officer Identification

PO Francis and Sgt. Hardell acknowledged interacting with § 87(2)(b) and are the subjects of **Allegations A** through **F**.

§ 87(2)(b) said that "a lot" of officers, possibly five, including PO Pierre, were present when he was asked by officers to remove his pants. § 87(2)(b) kept "blanking in and out," and could not describe the officers present, including who gave the directive, other than they were males, and some of them were possibly in uniform, but § 87(2)(b) could was uncertain. All of the officers interviewed denied that § 87(2)(b) was strip-searched and did not describe a crowd of officers in the holding cell at any point. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Recommendations

Allegation A: At Saint Marks Avenue and Albany Avenue in Brooklyn, PO Marcel Francis used physical force against § 87(2)(b)

Allegation B: At Saint Marks Avenue and Albany Avenue in Brooklyn, PO Thomas Hardell used physical force against § 87(2)(b)

§ 87(2)(b) stated that he had been standing with Sgt. Hardell for approximately 10 to 15 minutes, when one of the officers said that they had “something.” § 87(2)(b) turned around to his left to see what the officers had found. Sgt. Hardell forcefully pushed on his arms to turn him back around and, simultaneously, brought him to the ground by grabbing his arms and pushing him down while sweeping his feet out from underneath him. § 87(2)(b)'s chest and face struck the ground, causing a cut between his left eye and eyebrow. § 87(2)(b) believed he was handcuffed at this point, though he was not sure because he “blanked out” from hitting his head. While on the ground, the officers kicked him all over his body approximately five to six times and punched his eyes, though he did not know how many times. § 87(2)(b) believed that all of the officers struck him, but he could not tell specifically who did what. § 87(2)(b) remained positioned on his stomach while being struck and denied swinging at or injuring any officers. However, § 87(2)(b) also stated that he tried to look up to see what was going on and to keep the blood from “rushing to the ground,” and that, at some point, he tried to sit up by going to his knees. The officers then lifted him off the ground and placed him in a police car. § 87(2)(b) then noticed § 87(2)(b) and his friends standing approximately 25 to 50 feet away. § 87(2)(b) sustained cuts on his right elbow and scrapes on his right kneecap, but did not know if this was from falling to the ground or from being kicked and punched, and sustained two black eyes from being punched and his eyes were bloodshot. § 87(2)(b) was treated at § 87(2)(b) and received stitches (see § 87(2)(b)'s statement).

§ 87(2)(b) was treated by EMTs at the stationhouse and was then transported to § 87(2)(b). § 87(2)(b) had a 1 to 1 ½ inch laceration to his left eyebrow and abrasions on his elbows and arms. § 87(2)(b) told EMTs that he sustained the laceration while being handcuffed. It is also noted that § 87(2)(b) spat at everyone around him when he was taken outside to the ambulance. § 87(2)(b) received stitches for the laceration on his head at § 87(2)(b). § 87(2)(b) was diagnosed with altered mental status (see **Medical Records**).

§ 87(2)(b) did not participate in this investigation (**Board Review 15**).

PO Francis and Sgt. Hardell stated that after they found the firearm, § 87(2)(b) elbowed Sgt. Hardell continuously and attempted to flee. Sgt. Hardell stopped § 87(2)(b) and the momentum from his and § 87(2)(b)'s force caused them to fall to the ground. PO Francis stated that Sgt. Hardell placed § 87(2)(b) in a bear hug and that Sgt. Hardell brought § 87(2)(b) to the ground, but he did not see how he did this. Both officers stated that they tried to get § 87(2)(b)'s hands and pull them behind his back and they repeatedly told him to put his hands behind his back and to stop resisting. § 87(2)(b) resisted by holding his arms close to his body and flailing them, punching and kicking at the officers, and spitting. Both officers could smell alcohol on § 87(2)(b) and they believed that § 87(2)(b) was intoxicated on narcotics because he was stronger than the officers. PO Francis and Sgt. Hardell did not recall using additional force other than pulling on § 87(2)(b)'s arms. Sgt. Hardell and PO Francis did not recall punching or kicking § 87(2)(b) (see **Sgt. Hardell's and PO Francis' statements**). PO Francis's right patella was

fractured as a result of this incident and Sgt. Hardell received abrasions to his elbows and knees and suffered a strain to his right elbow (**Board Review 9**).

§ 87(2)(b)'s arrest photograph depicts visible injuries such as a bandage that extends from the middle of his forehead to slightly below his left eye, swollen and red eye, bruises on his cheeks, and a scratch on his neck (**Board Review 8**). § 87(2)(b)'s arrest report notes he resisted arrest and injured officers as a result. Furthermore, § 87(2)(b) was charged with assaulting a police officer and resisting arrest (**Board Review 7**).

Video Footage 2 shows § 87(2)(b) standing in handcuffs and refusing to enter the unmarked car by pushing his body away and down. § 87(2)(b)'s face is covered in blood. Sgt. Hardell, PO Francis and PO Pierre are pushing him into the unmarked car by his arms, chest and the back of his neck (**Board Review 2**).

Patrol Guide Procedure 203-11, stipulates that only the amount of force necessary to overcome resistance will be used to effect an arrest (**Board Review 13**).

§ 87(2)(g)
[REDACTED]

Allegation C: At Saint Marks Avenue and Albany Avenue in Brooklyn, PO Marcel Francis spoke discourteously to § 87(2)(b)

Allegation D: At Saint Marks Avenue and Albany Avenue in Brooklyn, PO Marcel Francis pushed § 87(2)(b) against a car.

Although § 87(2)(b) did not make these allegations (see § 87(2)(b)'s statement), Video Footage 1 shows PO Francis and Sgt. Hardell lifting § 87(2)(b) off the ground and then PO Francis says to § 87(2)(b) "Fucking moron, shut the fuck up. Shut the fuck up." Simultaneously, PO Francis pushes § 87(2)(b) in the back, causing § 87(2)(b)'s chest to hit a car. At the time of the push, § 87(2)(b) was standing in handcuffs. Additionally, no civilian is seen approaching or interfering with § 87(2)(b)'s arrest (**Board Review 1**).

PO Francis did not recall calling § 87(2)(b) a "fucking moron" or telling him to "shut the fuck up," and he did not recall pushing § 87(2)(b) against a car after being in handcuffs. PO Francis admitted that he was angry due to the struggle but did not recall what he said to § 87(2)(b). Upon seeing the video footage, PO Francis stated that the video depicts the moment § 87(2)(b) was lifted off the ground. PO Francis clarified that the voice that made the discourteous statement was not his or Sgt. Hardell's. Regarding the push against the car, PO Francis stated § 87(2)(b) pushed back while the officers tried to place him in the car, so PO Francis placed § 87(2)(b) against the car because he did not know if § 87(2)(b) was trying to run away (see **PO Francis' statement**).

Sgt. Hardell did not recall hearing any officer make the discourteous statement to § 87(2)(b) and he denied stating it himself. Sgt. Hardell stated that officers may have placed § 87(2)(b) up against a car due to momentum from the struggle, but denied that any officer pushed him against it. Upon seeing the video footage, Sgt. Hardell also corroborated that the video depicts the

moment when § 87(2)(b) was handcuffed and lifted off the ground. Sgt. Hardell further stated that he did not recognize the voice that made the discourteous statement and added that he did not know whether an officer or a civilian made this statement. Regarding the push against the car, Sgt. Hardell clarified that he could not tell from the video whether § 87(2)(b) himself went forward making contact with the car, whether he was making other movements, or if he was assisted forward (**see Sgt. Hardell's statement**).

Patrol Guide Procedure 203-09 requires that officers be courteous and respectful. Police Department v. Seguinot OATH Index No. 552/00 (2000) held that an officer is permitted to use profanity to forcefully make a point or to gain compliance with an order or direction. Patrol Guide Procedure 203-11, stipulates that only the amount of force necessary to overcome resistance will be used to effect an arrest (**Board Review 13**).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation E: At the 77th Precinct stationhouse, officers strip-searched § 87(2)(b)

§ 87(2)(b) stated that when he was placed in the holding cell that numerous officers told him to take off his pants. He was blacking in and out, and remembered that at some point his pants were on. All of the officers interviewed denied this happened, and the Command Log did not note that a strip search was performed (**See PO Francis' and Sgt. Hardell's statements and Board Review 8**). As explained in the **Explanation of Subject Officer Identification** section, the investigation was unable to identify the subjects of this allegation. § 87(2)(g)
[REDACTED]

Pod: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

